



Additionally, L.V. alleged (allegation two) that J.G. singled her out by texting her off hours to complete Emergency Home Confinement Furlough Investigations and calling her “insubordinate” to a union executive board member regarding her completing these investigations. However, the investigation revealed that it was R.A. who stated that L.V. was being “borderline insubordinate” to a union board executive member but he could not recall who that union board executive was, and she refused to provide the name. Further, R.A. sent an email stating that the furlough investigations would be assigned to all officers on a rotating basis and then J.G. sent an email to L.V. and other officers assigning each a furlough investigation. L.V. replied asking to be passed for the furlough investigations and that J.G. should consult with the union if he had any questions. Thereafter, J.G. forwarded her response to R.A. without comment, who said he would take care of it. At the time J.G. sent the email, the investigations were not optional. Also, a review indicated that L.V. only received four investigations, which was the least amount assigned to any officer on J.G.’s team and the collective negotiations agreement indicates that officers are to be available for a reasonable amount of overtime work and the list contains State and personal cell numbers.

Further, L.V. alleged (allegation three) that J.G. singled her out by directing her to include a specific parole violation in a C-39 parole violation package and stated to her “you’re not going to do it” in an aggressive and discriminatory manner when she disagreed. The investigation revealed that R.A. advised J.G. that if he feels the parole violation should be included then he should have included it and J.G. was acting within his job responsibilities directing L.V. to a specific violation in a C-39 parole violation package. J.G. denied making the alleged statement and L.V. could not identify any witness to corroborate this allegation.

Also, L.V. alleged (allegation four) that J.G. addressed her in an unprofessional manner on at least three occasions by going to her cubicle and asking if she was “ok” and further stating “it doesn’t seem like you’re ok.” However, J.G. did not recall saying this and L.V. could not identify any corroborating witness.

Moreover, L.V. alleged (allegation five) that J.G. commented on health matters that she was experiencing regarding COVID-19 by suggesting to a union executive board member that a COVID-19 antibody test would not be sufficient to prove that she has COVID-19. The investigation revealed that L.V. was submitting medical documentation through a union executive board member, who she declined to identify. However, through a chain of email messages it was determined that T.R., a Senior Parole Officer, who is an African-American male, was the board member, and he stated that L.V. was “medically cleared.” The investigation found that it was L.V.’s decision to include T.R. in the email chain regarding her COVID-19. R.A. stated that he had a conversation with T.R. suggesting that a COVID-19 antibody test may not be enough to prove someone has COVID-19 and J.G. may have as well. L.V.’s COVID-

19 antibody test indicates, “This test should not be used to diagnose acute SARS-Cov-2 infection.”

Additionally, L.V. alleged (allegation six) that J.G. commented on a health matter that she was experiencing regarding her “trigger finger” by stating that she should not be working. The investigation revealed that J.G. was acting within his job responsibilities when he spoke to her about her “trigger finger” as department policy indicates that an officer must be physically and mentally fit to safely carry a firearm. Both R.A. and J.G. advised L.V. that if she could not attend her firing range date to qualify to carry a firearm because of a problem with her “trigger finger” that this affects her ability to work.

Finally, L.V. alleged (allegation seven) that J.G. violated her right to privacy under the Health Insurance Portability and Accountability Act (HIPAA). However, the Equal Employment Officer (EEO) determined that this allegation did not implicate the State Policy and it was not investigated. Ultimately, based on the above-mentioned information, documents and interviews, the investigation was unable to substantiate the allegations.

On appeal, concerning allegation one, L.V. presents that she advised J.G. of her health status and provided the required medical documentation to A.V. She notes that she was approved all her time as she provided the appropriate documents. L.V. states that she was severely impacted by COVID-19 in the early stages and she did not have a primary doctor as her doctor’s office was closed due to COVID-19. She indicates that she did not disclose all symptoms as she appreciates privacy. L.V. claims that common sense, compassion and professionalism made it evident that she should not have been contacted, but she was. She asserts that it is not her place to ask others if they were contacted by J.G. as well. L.V. states that she witnessed J.G. causing emotional distress to T.R., another minority employee, by contacting him while on medical leave. She claims that him contacting her for timesheets and performance evaluation could have waited until she returned from medical leave, as a supervisor could have submitted her timesheets, and revisions to her timesheets could be made later. L.V. believes that she should have been contacted only for emergent reasons.

Regarding allegation two, L.V. states that she was not insubordinate, and she only spoke with J.G. Therefore, L.V. contends that J.G. advised R.A. that she was insubordinate. She presents that she spoke with T.R. and others in the union because overtime for furloughs was initially optional and she was confirming if it still was. L.V. indicates that T.R. discussed with R.A. that L.V. was concerned about her health and her mother’s health and she submitted a doctor’s note from her mother’s doctor advising that she was her mother’s caretaker and she requested to work shift work only, which R.A. did not oppose.

Referring to allegation three, L.V. states that it was already reviewed by a supervisor with more experience as a Sergeant. She states that the violation was dismissed. She reiterates her belief that J.G.'s would not have acted in this matter to another person of his same race and gender.

Concerning allegation four, she reiterates that he did address her unprofessionally. She notes that she shared this with Officers I. and R. because it was causing her distress and a hostile environment. L.V. presents that she also shared this experience and distress with Officers R. and A. and she spoke to Reverend R. because she wanted spiritual guidance and she did not want to report it to management. However, she was advised that reporting it was a matter of principle, which she agreed. She indicated that she thought J.G. managed this way because he was a new supervisor and she indicated how he was becoming overbearing and she could not tolerate it. L.V. also brought the matter to R.A.'s attention. However, instead of gaining the anticipated resolution and understanding, she was told that J.G. was doing what R.A. told him to do. However, L.V. does not concur that R.A. told J.G. to act this way and she believes he would not address a person of his same gender and race in this manner.

Referencing allegation five, L.V. states that J.G.'s statement was out of context and crossed boundaries regarding her health status. She asserts that J.G. is not an expert, no one asked for his opinion, and it was unprofessional for him to make remarks about her to the board members. She represents that T.R., then a board member, was a witness. L.V. contends that despite what the test states no comments were necessary. She emphasizes that she met all requirements per COVID-19 rules. Therefore, L.V. argues that J.G.'s treatment was discriminatory, and she received differential treatment and she believes that he would not do the same to a person of his race and gender. She also believes that the investigator was out of line commenting on her documentation, minimizing and dismissing her health condition, and did not conduct the investigation in a proper manner.

Regarding allegation six, L.V. states that the comments were made solely by J.G., and R.A. did not make the comments. She presents that she was forthcoming and the option to change range dates had always been extended for valid reasons. L.V. states that due to COVID-19, she was not at fault in having to postpone medical care. She indicates that once the Governor lifted restrictions, she requested a rescheduled range date that was not unreasonable, and she does not believe her treatment by J.G. was warranted. She states that there was no accountability for contracting COVID-19 on the job and J.G. would not do that to someone of his race and gender.

Concerning allegation seven, L.V. asserts that she is entitled to HIPAA rights. She asserts that it is illegal to cause her emotional distress during medical leave.

Overall, L.V. disagrees that the investigation was completed properly. She does not believe that the EEO was impartial and she was granted the opportunity to have another EEO assigned. She claims that her allegations were treated as if she was in the wrong and not the victim. L.V. believes that the investigation was reported to management without all facts. Therefore, she views the alleged impartial investigation as retaliatory and intimidating, which is against the State Policy. L.V. asserts that there was no diverse perspective within the investigation. She states that there is no accountability for the impact of the emotional distress, hostile environment and undue duress. She presents that she reported her concerns to R.A. to avoid a complaint. L.V. indicates that she consulted with Officer B. prior to going to the EEO and Officer B. stated that J.G. did not treat him as he treated her. Therefore, she could only conclude that J.G. treated her this way because she is a minority female. L.V. states that her previous supervisor related to minorities differently. She asserts that J.G. subjected another minority, T.R., who was on medical leave to emotional distress. L.V. acknowledges that she cannot prove percent that J.G.'s behavior toward was based on race and gender, but she questions what other explanation can explain her treatment by J.G.

L.V. requests that she not have any dealings with J.G. and that he obtain further training in sensitivity and management. She states that there are other officers who did not appreciate J.G.'s work ethic and felt overwhelmingly disrespected, especially minority officers. L.V. also complains about the timing of the investigation. She reiterates that she was not the only officer that was subject to harassment, discrimination and emotional distress by J.G. She requests that J.G. not be permitted to further harass, discriminate, disrespect, create a hostile environment, and cause distress to any other employee.

In response, the appointing authority presents that L.V. names many witnesses on appeal which she did not provide during her interview. Further, it asserts that she provides no new evidence or information that would change the determination. The appointing authority states that it conducted a thorough and impartial investigation regarding the six allegations that implicated the State Policy. However, based on the interviews and documents that were obtained, it was unable to substantiate her allegations. It notes that L.V. and J.G. were interviewed. Further, the appointing authority indicates that R.A. was interviewed, and he did not provide any corroboration or evidence that any discrimination actions took place by J.G. against L.V. Instead, R.A. and A.V. provided documentation in support of J.G.'s actions. Regarding the timing of the investigation, it states that complaint was initially made to R.A. on July 23, 2020, L.V. was interviewed on November 5, 2020, and a final determination was issued on January 6, 2021. Further, the appointing authority asserts that delays were caused by a change in personnel and the COVID-19 emergency. The appointing authority notes that L.V. alleges that another minority employee was recently caused emotional distress by J.G. and it states that

it will address this in accordance with the State Policy. However, it relies on its determination letter and asserts that L.V. has failed to meet her burden on proof.

## CONCLUSION

*N.J.A.C. 4A:7-3.1(a)* states, in pertinent part, that the State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, employment discrimination or harassment based upon race and gender is prohibited.

*N.J.A.C. 4A:7-3.1(i)* provides that the burden is on the complainant to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy.

*N.J.A.C. 4A:7.3-2(i)* provides that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

*N.J.A.C. 4A:7.3-2(i)* provides that a final determination shall be issued no later than 180 days after the initial intake of the complaint is completed.

*N.J.A.C. 4A:7.3-2(m)4* states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

Initially, the appellant complains about the timing of the investigation. The record indicates that the appellant's intake of her complaint was signed on August 20, 2020 and the determination letter was issued on January 6, 2021, which was within 180 days of the intake. Accordingly, the Civil Service Commission (Commission) finds that the investigation was timely. Further, the appellant alleges that the investigation was not thorough and/or impartial. She claims that the investigator submitted the investigatory report to management without all the facts. Additionally, she states that investigation was not conducted with a diverse perspective. However, other than the appellant's own beliefs, the appellant has not presented one scintilla of evidence that the investigation was not conducted in an impartial manner. The appellant has not indicated on appeal one witness which she asked the investigator to interview that was not interviewed. She has not provided on appeal any documentation or other confirming evidence that she presented to the investigator that was ignored in the determination letter. The mere fact that an investigator may not be the same race, gender and/or in other protected category as a complainant is not a the basis for a violation of the State Policy and does not automatically make an investigation biased. Accordingly, the Commission finds that the investigation was thorough and impartial. Concerning allegation seven, the appellant alleged that J.G. violated her rights to privacy under HIPAA, which caused

her emotional distress. An alleged violation of HIPAA is not an allegation based on the appellant's membership in a protected class under the State Policy. Therefore, the Commission finds that the EEO correctly determined that the allegation does not violate implicate the State Policy and appropriately did not investigate it. Instead, this allegation would need to be presented in the appropriate forum.

Regarding allegations one through six, L.V. alleges that J.G. treated her in a disparate and discriminatory manner based on her race and gender. Specifically, she states that J.G. harassed her, subjected her to emotional distress, and that she was not afforded privacy by J.G. while on medical leave. However, based on the record presented, these allegations by L.V. appear be solely complaints that she does not like J.G.'s management style. However, disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Additionally, L.V. has not provided any evidence, such as a signed statement from another co-worker, a document, an email, or any other evidence that confirms that the J.G. treated L.V. inappropriately based on her race and gender. Mere speculation, without evidence, is insufficient to substantiate a violation of the State Policy. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Therefore, based on the evidence presented to the EEO and in this appeal, the Commission is unable to substantiate that L.V. was subjected to a State Policy violation by J.G.

However, on appeal, L.V. presents a number of witnesses who she did not present to EEO for investigation. Additionally, she alleges that J.G. subjected T.R., a minority, to emotional distress while on medical leave, while Officer B., who presumably is not a minority, was not subjected to the same treatment by J.G.<sup>2 3</sup> Additionally, L.V. states that she has been made aware that several officers who did not appreciate J.G.'s work ethic and overwhelmingly felt he was disrespectful, especially toward minority officers. Accordingly, the Commission orders that L.V. shall specifically provide the EEO all officers who she believes were subject to discriminatory or disparate treatment based on race and/or gender by J.G. L.V. shall also provide the EEO all witnesses who she believes can provide evidence to confirm her allegations in that regard. Additionally, the EEO shall interview all witnesses presented by L.V. on appeal within its jurisdiction.<sup>4</sup> Finally, the EEO is specifically directed to investigate L.V.'s allegation that T.R. was subjected to discriminatory and/or disparate treatment by J.G. based on race.

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<sup>2</sup> The record is unclear regarding an incident that L.V. alleges took place between Officer B. and J.G., where Officer B. indicated to L.V. that he was not subjected to same treatment by J.G. as she was.

<sup>3</sup> The Commission notes that the mere fact that J.G. may have contacted two minority employees while on medical leave does not automatically substantiate that J.G. was subjecting L.V. and T.R. to disparate treatment based on race and gender as he may have had legitimate business reasons to contact both J.G. and T.R.

<sup>4</sup> The record indicates that one of the witnesses that L.V. presents on appeal, Officer I. is retired and no longer within the EEO's jurisdiction.

**ORDER**

Therefore, it is ordered that this appeal be denied but that a further investigation, as detailed above, shall be performed.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 7<sup>TH</sup> DAY OF APRIL, 2021

*Deirdre' L. Webster Cobb*

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